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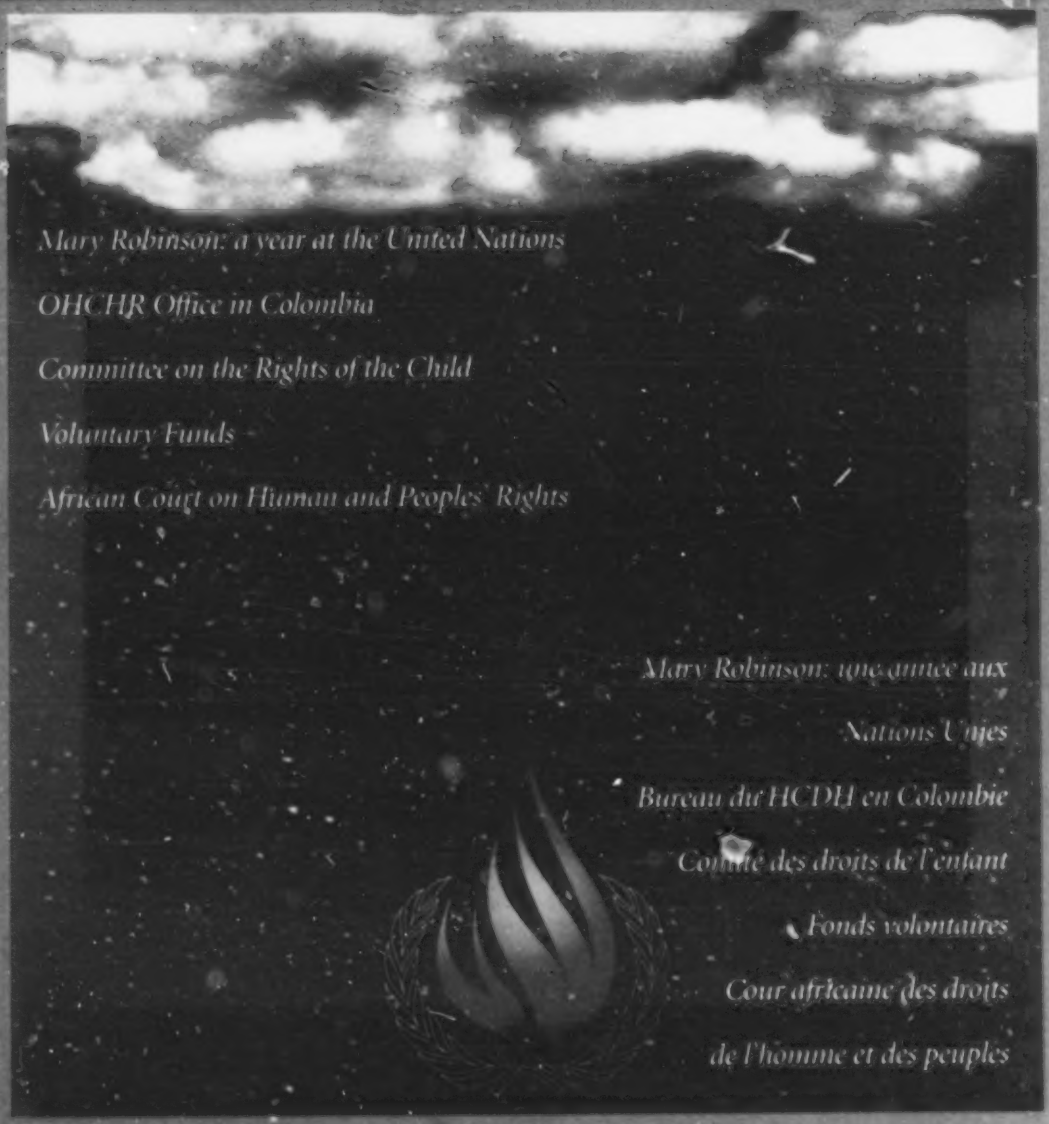

Mary Robinson: a year at the United Nations

OHCHR Office in Colombia

Committee on the Rights of the Child

Voluntary Funds

African Court on Human and Peoples' Rights

Mary Robinson: une année aux Nations Unies

Bureau du HCDH en Colombie

Comité des droits de l'enfant

Fonds volontaires

Cour africaine des droits de l'homme et des peuples

N° 4 Automne 1998

Droits de l'homme

REVUE TRIMESTRIELLE DU HAUT COMMISSARIAT DES NATIONS UNIES AUX DROITS DE L'HOMME

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EDITORIAL

Ma première année en qualité de Haut Commissaire aux droits de l'homme a été, comme prévu, marquée par les défis qu'implique une nouvelle fonction. Un nouveau Haut Commissaire, c'est à la fois un changement de personnalité et de style, mais aussi de rythme, de vision et de priorités pour les activités du Bureau.

Renforcer les partenariats avec les Etats membres, les programmes et les institutions spécialisées des Nations Unies, les organisations ou institutions régionales, nationales et locales et les organisations non gouvernementales a été l'une de mes priorités.

Au cours de cette première année, une priorité particulière a également été accordée aux missions et aux bureaux sur le terrain du Haut Commissariat. Mes visites sur le terrain se sont concentrées sur l'Afrique, l'Asie et l'Amérique latine. Les actions menées par le Bureau du Haut Commissaire en Colombie font l'objet d'un examen détaillé dans la section consacrée aux missions sur le terrain.

Dans cette revue, on trouvera aussi des informations sur les travaux de la Sous-Commission de la lutte contre les mesures discriminatoires et de la protection des minorités; le Comité des droits de l'enfant; le Fonds de contributions volontaires pour le Programme d'action pour la Troisième décennie de la lutte contre le racisme et la discrimination raciale; et le Fonds de contributions volontaires pour la coopération technique dans le domaine des droits de l'homme. Un article d'un intérêt particulier est consacré aux récents développements concernant le protocole relatif à la Charte africaine des droits de l'homme et des peuples.

Dans ce numéro, il est également fait état des difficultés constantes auxquelles nous sommes confrontés pour financer nos opérations. Les tableaux des pages 24 et 26 reflètent l'accroissement des contributions au Haut Commissariat. Cependant, les besoins du Bureau et les demandes qui lui sont adressées ont aussi connu un accroissement significatif. L'aide des Etats membres et de l'ensemble de la communauté internationale continue donc à être d'une importance primordiale afin de recueillir les fonds nécessaires et ainsi pouvoir répondre à ces demandes.

My first year in office was, predictably, marked by the challenges attendant on a new position. A new High Commissioner inevitably brings not only a change in personality and style but also in pace, vision and priorities to the activities of the Office. One of my priorities was to strengthen partnerships with Member States, UN programmes and specialized agencies, regional, national and local organizations or institutions and non-governmental organizations.

During this first year, OHCHR's field operations and offices were also a high priority: Africa, Asia and Latin America constituted the focus of my field missions. The activities carried out by the OHCHR office in Colombia are detailed in the section relating to the "Field".

Other articles in this issue provide information on the work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities; the Committee on the Rights of the Child; the UN Voluntary Trust Fund for the Programme of Action of the Third Decade to Combat Racism and Racial Discrimination; and the Voluntary Fund for Technical Cooperation in the Field of Human Rights. There is also an interesting feature on developments relating to the Protocol to the African Charter of Human and Peoples' Rights.

This issue also places emphasis on the recurrent difficulties faced in financing our operations. The charts on pages 24 and 26 reflect the increase in the level of contributions to the Office.

OHCHR's expectations and the demands on the Office have, however, grown significantly: the assistance of Member States and the international community as a whole therefore continues to be of primary importance in ensuring that the necessary funds are raised and made available to match those requirements.

Mary Robinson

High Commissioner
for Human Rights

Reflections on a year at the United Nations

When I left Ireland to assume my post as United Nations High Commissioner for Human Rights in September 1997, I was challenged and daunted by the responsibility, but very much looking forward to the year ahead. I had anticipated the difficulties and complexities of the position itself.

In many ways, the first substantive speech I made as High Commissioner for Human Rights – the Romanes lecture in Oxford, in November 1997 – reflected, in part, my growing sense of the potential of the UN if it committed itself firmly to converting the rhetoric of human rights language into a practical reality for the millions of people throughout the world who desperately need it. I suggested that the UN had to concentrate its focus on the protection and promotion of human rights as a core institutional value. It was nonetheless encouraging to note the rapidity with which that speech – initially criticized – was perceived as the rallying call for the very approach which the Secretary-General, Mr. Kofi Annan, had been advocating in his reform proposals. More importantly, many UN programmes and agencies have engaged with my Office in a remarkable adaptation of their own approaches with a view to incorporating explicit comments into the promotion and protection of human rights in their ongoing work. The Office of the High Commissioner for Human Rights (OHCHR) has signed and is actively implementing Memoranda of Understanding (MOU) with several agencies and strengthening our cooperation with others. The reform package of the Secretary-General provided us with a significant challenge and opportunity. The whole issue of integrating human rights into the work of the UN is facilitated by OHCHR's membership of all UN Executive Committees. It will be a long and winding road but there have been positive developments. The recent appointment of a colleague as human rights officer for Southern Africa, based in UN House in South Africa is, I believe, a clear illustration of the way forward in terms of integrating human rights into the activities of UN agencies and having a sound human rights resource person readily available to UN colleagues in their field activities.

Member States continue to place additional mandates on the Office to be achieved "within existing resources" that have been pared rigorously in recent years. Inevitably, a new High Commissioner brings not only a change in personality and style but also in pace, vision and priorities. The Office's public and UN profile is higher. The Secretary-General's reform initiatives have promoted interest in human rights throughout the UN system, and OHCHR is being looked at to contribute in many new ways. Underprovided in terms of personnel and finance, it is not surprising that many staff members are working longer and harder and under greater pressure. In this context, it has been a particular pleasure to welcome Mr. Bertie Ramcharan as Deputy High Commissioner. Mr. Ramcharan who, in many ways, is returning to his home base in human rights, previously worked in the Centre for Human Rights and has always shown a commitment to human rights issues throughout his various postings within the United Nations system.

DEVELOPMENT AND PARTNERSHIP

Since my appointment, much of my focus has been on in-house structures and staffing issues. It was important to build morale and engage in staff development so that the Office has the internal capacity to move forward. In August, I was pleased to welcome the heads of all our field operations to Geneva for a week-long session. This was the first time that such an event had been organized and it proved extremely useful – for those working in the field and in Geneva. It is an activity that my Office would wish to see established on a regular basis, perhaps even yearly. To develop further with a small but effective staff, strategic partnerships are necessary – with Member States, non-governmental organizations, regional, national and local organizations – and a critical part of my time investment is with partners and potential partners. A good example of involvement with partners is exemplified by two key meetings which brought together a variety of actors. The first was in

Stockholm and addressed the question of "Lessons learned in the Great Lakes Region of Africa"; the second, held in Bonn, addressed the "Strengthening of Human Rights Field Operations". At both meetings, the focus was on the undeniable responsibilities of the international community. I believe that there are lessons to be learned in relation to interventions and that we, the United Nations and the international community in general, have failed to learn them in the past. Serious mistakes have been made; we must recognize them and ensure that they are not repeated. We must also ensure that the donor community does not become divided – and allow Governments to play one donor off against another, or indeed play Governments off against the United Nations. I make no apologies for saying that the promotion and protection of human rights should be at the heart of all financial donations to countries in need. It is quite clear that human rights violations are frequently the precursor of a breakdown in society and that they must be avoided in the rebuilding process.

FIELD OPERATIONS AND COUNTRY ISSUES

One of my priorities was to visit certain of our field operations as early as possible and, in that context, to visit other countries in the regions concerned.

Given the special interest in Somalia, Rwanda and other African countries developed during my time as President of Ireland, and inspired by the commitment of Irish aid workers, it was perhaps an obvious choice for me to select that region for my first field mission. At the end of a series of meetings in Rwanda in December 1997, I was critical of the Government's lack of progress in resolving a number of human rights issues, stressing the need for the people and the Government of Rwanda to take ownership of their own human rights situation and pledging the support of my Office to help them achieve this. In July, the then Deputy High Commissioner spent several days in Kigali trying to secure an extension of the OHCHR mandate, but the Government was not able to agree to the inclusion of monitoring. We would have wished to develop jointly an exit strategy with the provision that international monitors continue their work whilst internal capacity-building was taking place. Our focus at present is on supporting the work of the Commission on Human Rights' Special Representative on Rwanda and we hope, in time, to be able to enter into technical cooperation projects with the Government of Rwanda.

En route to Rwanda, I visited Uganda where I was particularly pleased to meet the Human Rights Commission – an independent body that is making significant progress and is well respected in its society. Meeting the members, hearing of their work and the challenges they face, strengthened my determination for OHCHR to support such institutions. I met the members again in early July at a regional meeting of National Human Rights Commissions held in South Africa. In many ways, Africa and Asia have taken the lead in this important development and I hope that the Commission to be established as a result of the Peace Agreement between the British and Irish Governments will meet the exacting standards contained in the Paris Principles and have the same powerful impact on society that so many in the South have had. It was a special pleasure for me to be in South Africa with President Nelson Mandela on 10 December 1997 – I believe he was the most appropriate person to be with as we commenced the 50th anniversary year of the Universal Declaration of Human Rights.

Specific challenges faced in Cambodia identified it as the field operation for my next visit. The challenges being faced by that country, and many of its neighbours, are all too clear and the international community must focus on discharging its responsibilities to the people of the region. Issues such as AIDS, trafficking in women and children, sex tourism and child prostitution do not respect boundaries and require coordinated and sustained action by all.

REGIONAL ARRANGEMENTS

There are many significant regional structures developing within the field of human rights which I greatly welcome. Many important regional meetings have taken place and I have been able to participate in certain instances. In Japan, I took part in a symposium organized by the Ministry of Foreign Affairs and the UN University and attended by participants from fifteen countries in the region – government officials, NGOs, academics – but all human rights activists. An excellent chairman's summary noted the participants' affirmation that the Universal Declaration's content "remains valid in today's world and must be strongly supported and that "the Declaration has ... attained the position of the minimum international human rights standards to be respected by all States, non-state actors and individuals". In February last year, I visited Tehran for the workshop for countries in the Asia-Pacific region. The workshop

was most productive and the conclusions established a clear framework for future activities. The 36 participating countries agreed to hold annual meetings to review their progress in the following four areas: national human rights plans; human rights education; national human rights institutions; and strategies for economic and social rights and the right to development. I am happy to commit my Office to supporting and facilitating these activities in every way possible and, in particular, to helping ensure the success of the annual meetings to review progress. Another regional meeting I was pleased to attend was held in Morocco at the end of April 1998 and attracted representation from eight countries and over 40 non-governmental organizations from the Mediterranean region. The topic under discussion was national institutions for human rights.

THE COMMISSION ON HUMAN RIGHTS

The Commission on Human Rights meets every year for a six- week period: it is the intergovernmental body which addresses human rights issues and which my Office services. I took the fact that the 1998 session opened on the eve of St Patrick's day as a good omen! The degree of high-level participation was heartening: this included the presence of some 70 heads of State or Government and foreign ministers. The very clear focus on economic, social and cultural rights reflected my determination, since my appointment, to encourage a proper balance in addressing all rights: a balance between the focus on civil and political rights and that on economic, social and cultural rights.

After 13 years of work, the Declaration on Human Rights Defenders was adopted without a vote. I believe that this was a most appropriate way for the Commission to commemorate the 50th anniversary of the adoption of the Universal Declaration. Regrettably, the euphoria of the adoption of the Defenders Declaration was short-lived. Within days we had the very callous and brutal murders of a notable human rights lawyer in Colombia and of a church leader in Guatemala who had for so long shown such personal commitment and leadership in the field of human rights. What does the Declaration mean to them? We must take steps to ensure it is implemented to provide some degree of protection to all human rights defenders and, in particular, to that most important group of human rights defenders – the unnamed, unknown, unsung individuals working at local level in both promotion and protection and whose lives are frequently at risk. We must never forget them. The Declaration on Human Rights Defenders was adopted by the General Assembly on 9 December 1998.

A very important initiative taken by the Commission, under the most able and effective chairmanship of South Africa's Ambassador, Jacob Selebi, was to agree a review of the mechanisms of the Commission. This review, which has been done in close cooperation with my Office is, I believe, both timely and significant. An internal OHCHR task force worked in a complementary role to the Bureau during the past few months and I have also supported an academic study of the treaty bodies. These steps will enable us to have, over the next year or so, comprehensive reviews of our field presences, the mechanisms and the treaty bodies helping us to plan appropriately as we move into the next millennium. Two special forums, initiated by my Office during the Commission, were both very successful and with wide participation. The forum which focused on the integration of human rights within the United Nations and which was chaired by the Secretary-General was particularly fortunate to have President Havel and Eli Wiesel participate – and challenged us. The second, on the development of benchmarks for economic, social and cultural rights, has initiated an important process which we will return to in the very near future.

One of my most important missions took place from 5 to 15 September, the first-ever visit of a High Commissioner for Human Rights to China. Under the terms of the Memorandum of Intent which I signed with the Chinese Government, my Office would launch a technical cooperation programme in China and, with the cooperation of the Chinese authorities, a needs assessment mission from my Office would visit China within six months. I was pleased to be informed by Vice Premier Qian that China intended signing the International Covenant on Civil and Political Rights (ICCPR) which they subsequently did in October. I welcomed this development and encouraged the Government of China to consider the speedy ratification of this Covenant and of the one on Economic, Social and Cultural Rights which it had signed in the previous year. I had a fruitful meeting with President Jiang who shared with me the considerable efforts undertaken by his Government in the aftermath of the recent floods which had devastated parts of the country. I was struck by the scale of issues confronting the Chinese authorities, impressed with the important economic and social progress made over the past few years but also aware of the enormity of what remains to be

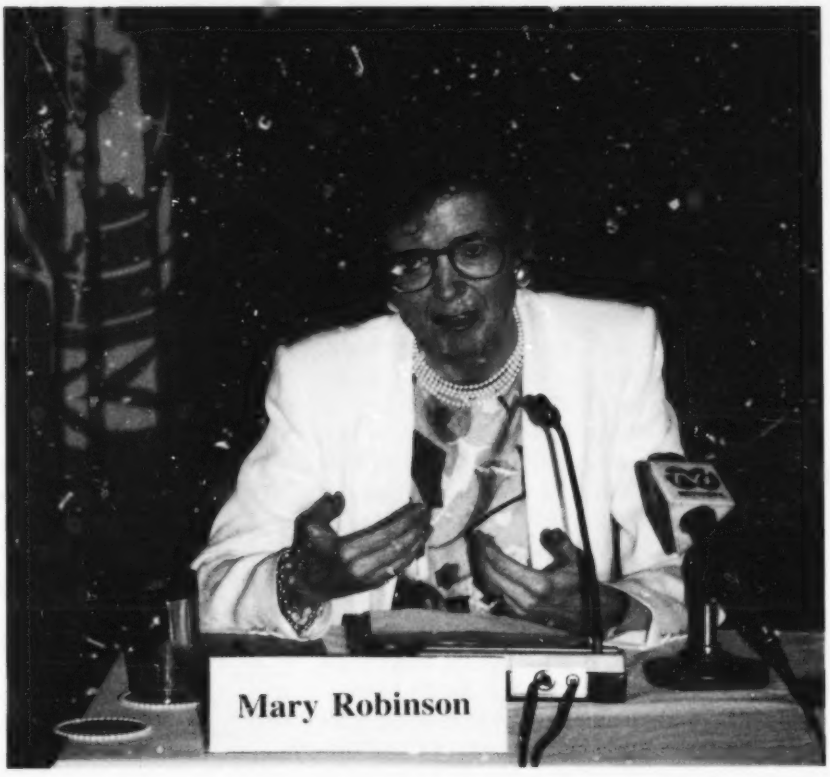


Photo: OHCHR

The High Commissioner's first year in office was a landmark year: one of challenge and opportunity, of hurdles cleared and partnerships strengthened

done. I provided the Chinese authorities with an aide-mémoire cataloguing the recommendations made by the treaty monitoring bodies and mechanisms of the Commission. I urged the authorities to respond positively to these recommendations. In short, I believe the Chinese Government and OHCHR have launched a process to improve the situation of human rights in that country.

In August, I addressed an important conference on freedom of religion hosted by the Norwegian Government, and Norway has since pledged to build a broad-based coalition of support for the Special Rapporteur on Religious Intolerance. In early October, I went to Uppsala to give the first Dag Hammarskjold Lecture "New Challenges to Human Rights". Official visits during 1998 included programmes in Bern, London, Washington, Paris, Moscow, Stockholm, Dublin, Vienna, Rome and Strasbourg as well as in Botswana, Canada and Northern Ireland. During the time ahead there will, undoubtedly, always be challenges in the field of human rights. Many are in response to negative actions but there are also positive and proactive steps that can be taken. One I particularly welcomed arose from a request made at the opening of the Commission on Human Rights last March by the Foreign Minister of Iran for the organization of Islamic commentaries/perspectives on the Universal Declaration of Human Rights. My Office worked in close cooperation with the Organisation of Islamic Conference and a number of missions in Geneva; a key element was a two-day seminar in Geneva on 9 and 10 November. With the growth of Islam throughout the world, this process is not only challenging but very timely.

As the millenium draws to a close, it is imperative that the important advances made over the past few years be preserved. And yet, the dominant images in my mind are of the shocking examples of man's inhumanity to man: the Teul Slung Museum in Phnom Penh and the genocide sites in Kigali, reflected in the Auschwitz and Hiroshima sites which I have also visited. They reinforce the urgency of the situation we all face. How many times has the world said "never again"? How many more times will we allow these words to be said? I hope that our work will contribute to ensuring that they will never be said again but the responsibility belongs to us all.

Mary Robinson

SUB-COMMISSION

50th Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities: a brief summary

The 50th session of the Sub-Commission, convened as scheduled from 3 to 28 August 1998, elected Mr. El-Hadji Guissé (Senegal) as Chairman; Mr. Guoxiang Fan (China), Mr. David Weissbrodt (USA) and Mr. Miguel Alfonso Martínez (Cuba) as Vice-Chairmen; and Mr. Ioan Maxim (Romania) as Rapporteur. It should be mentioned that inasmuch as Asia was unable to assume the chairmanship of the session under reference, the rotational order was adapted to reflect agreement between African and Asian members.

In her address to the Sub-Commission, the High Commissioner for Human Rights emphasized the importance of taking the message of the Universal Declaration of Human Rights to as wide an audience as possible in the commemorative year of its 50th anniversary. An OHCHR survey of existing language versions of the UDHR had established the availability, as at August 1998, of more than 210 national and local language versions and more than 60 additional versions in pictorial, audio-visual and other forms. The High Commissioner informed the Sub-Commission that a new OHCHR website page, making more than 250 versions of the UDHR accessible, would be launched on 10 December 1998.

The Sub-Commission held a special meeting to commemorate the 50th anniversary of the UDHR, in keeping with the decision taken at its 1997 session.

At the 50th session, the traditional statement by the Chairman of the Commission on Human Rights to the Sub-Commission was the subject of particular attention since it focused on the review of the role and mandate of this expert body as part of the overall exercise undertaken by the Bureau of the Commission, pursuant to Commission decision 1998/112. The Chairman, Ambassador Jacob Selebi, commented that the Sub-Commission should contribute to the review by putting forward recommendations for improvement and by providing clear indication of how it anticipated making its unique contribution to promoting and protecting human rights. In this regard, a consensus paper was prepared by the experts (E/CN.4/Sub.2/1998/38) for enhancing the Sub-Commission's effectiveness. A special debate on this issue was held in both private and public sessions on 10 August 1998.

COUNTRY SITUATIONS AND THE 1503 PROCEDURE

Under the agenda item dealing with violations of human rights and fundamental freedoms, two statements were made by the Chairman on the human rights situation in Kosovo and on the plight of Bhutanese refugees. As in previous years, the Sub-Commission took action on all proposals under this item by secret ballot. The Sub-Commission adopted resolutions on the situation in Belarus (17 in favour, 4 against and 3 abstentions), the Democratic People's Republic of Korea (19-4-1), Mexico (12-6-6) as well as on the rights of human rights defenders in all countries (21-3-0). A draft resolution on the situation of human rights in Algeria was rejected (10-10-4) whilst a draft resolution on Bahrain was withdrawn by its sponsors.

Under its agenda item dealing with the 1503 procedure, the Sub-Commission transmitted some country situations to the Commission and decided to defer consideration of a number of communications relating to certain other countries.

RACISM

Under the item relating to racism and racial discrimination, the Sub-Commission, following a specific request from the Commission on Human Rights, made a number of proposals preparatory to the forthcoming World Conference against Racism and requested three of its members to prepare working papers on the rights of non-citizens; the worldwide increase in incidents of racism; and proposals for the work of the World Conference. The Sub-Commis-

sion also recommended the appointment of a Special Rapporteur on the concept and practice of affirmative action.

SOCIO-ECONOMIC RIGHTS

The Sub-Commission adopted a total of 10 resolutions and decisions relative to economic, social and cultural rights. It welcomed the final report on human rights and income distribution. Recommended actions included the appointment of a Special Rapporteur (Mr. Guissé from Senegal) on the right to a drinking water supply and to sanitation; the establishment, on a broad participatory basis, of a Social Forum to meet during its annual sessions; and the introduction of a follow-up mechanism on the question of the impunity of perpetrators of violations of economic, social and cultural rights. The Sub-Commission decided to establish a sessional working group – for a three-year period – to examine the working methods and activities of transnational corporations. It also requested three of its members to prepare working papers on the right to education and on human rights as the primary objective of trade, investment and financial policy.

HUMAN RIGHTS OF WOMEN AND CHILDREN

The mandate of the Special Rapporteur on traditional practices affecting the health of women and the girl child, Ms. Warzazi from Morocco, was recommended for extension. A resolution on the situation of women in Afghanistan was adopted without a vote.

The Sub-Commission expressed its appreciation for the final expert report on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict, and recommended its publication and wide distribution. The Special Rapporteur was requested to submit an update on recent developments to the next session of the Sub-Commission.

The Sub-Commission proposes the establishment of a voluntary fund to enable wider participation at meetings of the Working Group on Minorities

INDIGENOUS ISSUES

Under the agenda item on indigenous peoples, the Sub-Commission requested its Special Rapporteur on treaties, agreements and other constructive arrangements between States and indigenous populations, Mr. Alfonso Martínez from Cuba, to submit the definitive version of his report. It also requested the Special Rapporteur on indigenous land rights, Ms. I. Daes from Greece, to submit her final working paper in 1999.

MINORITIES

On the issue of minorities, the Sub-Commission recommended the establishment of a voluntary fund enabling minorities to participate in the Working Group on Minorities.

ADMINISTRATION OF JUSTICE

As in previous years, the Sub-Commission established a sessional working group on the administration of justice. On the recommendation of this working group, the Sub-Commission took a decision to submit the draft International Convention on the Protection of all Persons from Enforced Disappearances to the Commission on Human Rights for its consideration.

FREEDOM OF MOVEMENT

Under this agenda item, the Sub-Commission adopted a resolution on housing and property restitution in the context of the return of refugees and internally displaced persons. In another resolution it decided to convene an expert seminar to make practical recommendations for the future work of the Sub-Commission on the issue of the right to freedom of movement.

OTHER DEVELOPMENTS

Having considered the question of further developments in areas within its mandate, the Sub-Commission entrusted three of its members with the preparation of working papers for its next session on reservations to human rights treaties; on the observance of human rights by States not parties to United Nations human rights conventions; and on weapons of mass destruction or with indiscriminate effect. The Special Rapporteur on human rights and terrorism, Ms. Koufa from Greece, was requested to submit her preliminary report to the Sub-Commission in 1999 and a final report at the fifty-third session. Other decisions adopted under this item address the promotion of dialogue on human rights issues, the humanitarian situation in Iraq and the adverse consequences of economic sanctions on the enjoyment of human rights.

The Sub-Commission held 36 plenary meetings, attended by 148 accredited NGOs, 110 Government observers and 26 UN bodies, inter-governmental and other observer delegations. During its 50th session the Sub-Commission adopted 30 resolutions and 15 decisions as compared with 43 resolutions and 19 decisions at its 1997 session.

In his closing statement, the Chairman of the 50th session of the Sub-Commission requested that every effort be made to preserve, encourage and enhance the Sub-Commission's potential and that, on its own initiative, the Sub-Commission broaden its range of activity to reflect current world events.

The fifty-first session of the Sub-Commission will be held at Geneva from 2 to 27 August 1999.

María Francisca Ize-Charrin and Guennadi Lebakine

La Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Colombia

La Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en Colombia fue establecida en virtud del acuerdo suscrito entre el Gobierno de Colombia y las Naciones Unidas el 26 de noviembre de 1996 y sus actividades se iniciaron con la apertura de su sede en Bogotá en abril de 1997.

El marco del mandato y competencias de la Oficina se perfilaron en las declaraciones del Presidente de la Comisión de Derechos Humanos de la ONU durante el 52° y el 53° período de sesiones y se precisaron en el acuerdo antes mencionado, el cual estipula que la Oficina observará la situación de los derechos humanos con el objetivo de asesorar a las autoridades colombianas en la formulación y aplicación de políticas, programas y medidas para la promoción y protección de esos derechos en el contexto de violencia y conflicto armado interno que vive el país.

Colombia es un país que se precia de no haber tenido dictaduras militares, ni gobiernos de facto, durante los últimos cuatro decenios. La economía colombiana es una de las pocas en América Latina, si no la única, que no ha registrado índices de crecimiento negativos en los últimos 20 años, período en el cual todos los países latinoamericanos sufrieron los embates, y algunos simplemente naufragaron, debido a las crisis de sus deudas externas y las hiperinflaciones. Al mismo tiempo, Colombia es un país que a lo largo del último decenio ha calificado en el índice de *desarollo humano* del Programa de las Naciones Unidas para el Desarrollo (PNUD) en un rango de puestos entre el 44 y el 61, para un total de 174 países evaluados, es decir se ha ubicado por lo general en el tercio superior a nivel mundial.

Estos rasgos aparentes de estabilidad estructural se ven sin embargo confrontados por la realidad cotidiana de casi 40 millones de habitantes, de los cuales 18 millones son considerados pobres (10 millones en las zonas rurales y 8 millones en las ciudades), que reflejan una gran desigualdad en la distribución de los ingresos (en las ciudades colombianas el decil más pobre recibe menos del 2.2% del ingreso mientras que el decil más rico recibe más del 39 %). A ello se unen 37 mil muertes violentas por año (15 % de ellas relacionadas a causas políticas y a todo tipo de manifestaciones del conflicto armado y sus múltiples actores), que hacen de Colombia un candidato habitual al título del país más violento del planeta.

El cuadro de los actores del conflicto armado colombiano tiene, por una parte, a los grupos armados insurgentes que se oponen al Estado desde la década del 60, como las Fuerzas Armadas Revolucionarias de Colombia (FARC), cuyos combatientes oscilan entre 7 y 10 mil; la Unión Camilista Ejército de Liberación Nacional (UC-ELN), con fuerzas entre 3 y 5 mil combatientes; y el Ejército Popular de Liberación (EPL), que contaría con unos mil a dos mil combatientes. Por otra parte, las Fuerzas Militares que, a pesar de contar con unos 160 mil efectivos y disponer de recursos que absorben el 12 % del presupuesto estatal, mantienen una organización y una disposición de sus efectivos ineficaz para su objetivo de eliminar militarmente al adversario. Por último, decenas de *grupos de autodefensa*, cuyo efectivos oscilarían entre los 3 mil y los 5 mil individuos, patrocinados originalmente por el Estado y organizados por las Fuerzas Militares desde mediados de los años 60 y apenas puestos al margen de la ley a finales de los años 80, muchos de los cuales han comenzado a pronunciarse pública y colectivamente como "Autodefensas Unidas de Colombia" (AUC), siendo su núcleo más numeroso y conocido el de las "Autodefensas Campesinas de Córdoba y Urabá" (ACCU).

Sumado a este escenario, y como un elemento que agrega una mayor complejidad, resulta indispensable subrayar que Colombia se ha visto afligida por el enorme poderío de las redes del narcotráfico, las cuales afectan desde hace un cuarto de siglo la marcha económica y la vida política del país e incluso perturbaron seriamente las relaciones internacionales durante el último lustro.

Inmersa en el panorama brevemente descrito en los párrafos anteriores, la Oficina es el eslabón principal que contribuye a que la Alta Comisionada pueda tener un conocimiento cabal y detallado de la situación interna del país para así poder presentar un informe analítico sobre Colombia a la Comisión de Derechos Humanos de la ONU. Para ello la Oficina dispone de un mandato explícito para reportar tanto sobre el respeto y la observancia de los derechos humanos como del derecho internacional humanitario en el país.

A lo largo de su primer año y medio de funcionamiento, la Oficina ha establecido fructíferas relaciones, en materias de su competencia, con autoridades políticas de nivel nacional, regional y local, funcionarios administrativos, comandantes militares y policiales, representantes de la sociedad civil, académicos, periodistas y organizaciones no gubernamentales de derechos humanos. Igualmente ha mantenido una política general de "puertas abiertas" para recibir toda queja o solicitud de orientación por parte de cualquier ciudadano. Incluso en algunas ocasiones, particularmente durante sus visitas a las zonas rurales del país, la Oficina ha sostenido reuniones con grupos pertenecientes a las fuerzas insurgentes y a las fuerzas paramilitares.

La intensa actividad desplegada en estas tareas, contando para ello con un equipo de 6 personas, ha servido para que la Oficina consolide su propio conocimiento en profundidad de la realidad colombiana y paralelamente alcance un amplio reconocimiento nacional, lo cual a su turno amplía y potencia su capacidad de influencia y acción.

La reciente visita a Colombia de la Sra. Mary Robinson, Alta Comisionada de las Naciones Unidas para los Derechos Humanos, permite consolidar los logros de esta primera etapa y enfrentar con mayores brillos el reto de contribuir al mejoramiento de la situación de los derechos humanos y del respeto de la normativa internacional humanitaria en el país. Así lo destacaron ante ella todas las autoridades y personalidades con las que se entrevistó durante su estadía en el país entre el 19 y el 22 de octubre de 1998.

La presencia de la Sra. Robinson se produjo en un momento de especiales características, tanto por el todavía creciente proceso de transición gubernamental luego de la transferencia constitucional del mando presidencial el pasado 7 de agosto, como por el expectante período de preparación para el inicio de acercamientos para el diálogo entre el Gobierno y las FARC previsto para el 7 de noviembre.

Durante su visita también pudo apreciar la inquietante dinámica de agudización del conflicto armado que experimenta el país desde hace casi dos años, pues el propio día de su arribo se reportaba el fatal desenlace de un ataque del ELN contra una

La economía colombiana es una de las pocas en América Latina, si no la única, que no ha registrado índices de crecimiento negativos en los últimos 20 años

sección del oleoducto en el departamento de Antioquia y el subsiguiente incendio terminaba causando la muerte de alrededor de 70 personas, mientras que al día siguiente caía asesinado a las puertas de su domicilio en Bogotá a manos de presunto "paramilitares" el Vicepresidente de la Central Unitaria de Trabajadores, el sindicato más importante del país, cuando aún continuaba la huelga nacional que su organización encabezaba. Incluso tuvo una percepción de primera mano de las tremendamente difíciles condiciones en las que trabajan los defensores de los derechos humanos en Colombia cuando, durante su asistencia a un seminario internacional sobre la protección de estos activistas, en la sede de la reunión los participantes recibieron una amenaza de bomba.

En esa tirante coyuntura el mensaje de la Alta Comisionada se orientó a destacar ante las autoridades ejecutivas, legislativas y jurisdiccionales las principales preocupaciones en materia de derechos humanos que diferentes órganos y mecanismos de las Naciones Unidas han venido señalando al Estado colombiano, y que ella misma recogió, amplió y detalló a en su propio informe presentado ante la Comisión de Derechos Humanos de la ONU el pasado mes de marzo. Estas preocupaciones se han traducido en recomendaciones específicas que giran en torno a la lucha contra la impunidad, el cese de la administración de justicia "sin rostro", la adopción de un Código Penal Militar en plena conformidad con la normativa internacional, la definición y castigo penal de la desaparición forzada, la protección de los defensores de los derechos humanos y la urgente necesidad de un manejo integrado del vasto problema del desplazamiento forzado interno, lo cual incluye un decidida acción contra los grupos paramilitares que son hoy en día sus principales causantes.

Y, avanzando en el desarrollo de estos temas, la Alta Comisionada le asignó una importancia crucial y estratégica a que tales preocupaciones puedan ser resueltas favorablemente, sin desligarlas de los actuales esfuerzos del Gobierno por alcanzar la paz.

El Dr. Andrés Pastrana, Presidente de la República, respaldó el compromiso de su gobierno con el fortalecimiento de la Oficina como mecanismo de interlocución privilegiado para el tema de los derechos humanos y adelantó que todas las preocupaciones reseñadas por la Alta Comisionada serían consideradas en un inminente plan de implementación cuya elaboración encomendó en el acto al Vicepresidente de la República.

La urgencia sobre lo que requiere el país para mejorar sustantivamente la situación de los derechos humanos, tanto en esfuerzos de sus autoridades como en apoyo de la comunidad internacional, se hace cada día más apremiante. Las actuales expectativas de que el inicio de diálogos entre el Gobierno y las fuerzas insurgentes conozcan efectivamente la paz son una ocasión para realzar y reafirmar una agenda concreta en el campo humanitario y de los derechos humanos. La Alta Comisionada ha planteado esta perspectiva de trabajo para la Oficina en Colombia, apostando por una etapa de consolidación y reforzamiento de la operación que se haría realidad lo más pronto posible.

Xavier Hernández

Committee on the Rights of the Child

Perceptions of Future Challenges

Established in 1991, the Committee on the Rights of the Child started its monitoring of the Convention on the Rights of the Child in 1993. This treaty body has reviewed some 100 reports from States parties during the past six years and has gained international recognition by bringing child-related matters into sharper focus, identifying new issues and recommending action in nearly all fields, as well as by providing a dynamic and innovative interpretation of the human rights of children. It has also played a unique role in catalysing efforts to reinforce the partnership working for the implementation of the Convention on the Rights of the Child at country level. After the undeniable success of near universal ratification of the Convention and in the light of the upcoming tenth anniversary of its adoption, it would be useful to look towards the future in an attempt to understand some of the emerging global challenges facing the Committee.

The work of the Committee on the Rights of the Child (hereafter the Committee) is likely to have extensive impact on several issues.

IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS LAW

Until the late eighties, most States perceived the ratification of international human rights treaties as a highly sensitive political matter. Progress in ratification was slow. It took over twenty years for the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, respectively, to attain the significant breakthrough of 100 ratifications.[1] The adoption, in 1989, of the Convention on the Rights of the Child (hereafter the Convention), prompted a less passive approach on the part of States: 100 ratifications were reached in the autumn of 1991, two years only after its adoption by the UN. Recognizing rights for children provided a noncommittal approach to human rights. In acknowledgement of its unique nature, States demonstrated that the Convention could not be neglected – and that it was incumbent on them to be fully committed to the rights of the child. This circumstance, in conjunction with the end of the cold war, created an environment in which human rights could be discussed in a less politicized fashion. At least in absolute terms. This evolution led to a new approach by States: those which had not ratified even one of the five major international human rights treaties before 1989 were now initiating the ratification process for the Convention on the Rights of the Child, to be followed, in most cases, by those dealing with the rights of women and the elimination of racial discrimination. Today, all of the world's 193 States[2] have ratified at least one of the six major international human rights treaties:[3] an extremely important measure in that, whether the issue is "children", "torture", "women", "discrimination", "civil and political rights" or "economic, social and cultural rights", all recognized States of the world community are committed to some kind of international scrutiny and accountability. As of 1 November 1998, twelve States have ratified only one convention – the Convention on the Rights of the Child.[4] Another dozen States have ratified only two of the six major conventions, in most cases CRC and CEDAW or CERD.[5]

The door opened with the adoption of the Convention on the Rights of the Child in 1989, putting the monitoring Committee in a dynamic but sensitive position.

The Committee cannot ignore – and it does not – that the implementation of children's rights is naturally linked to the global human rights situation in each country. Children's rights are part of the human rights family: they share common definitions, approaches, concepts, issues and objectives. The Committee has, in consequence, systematically held discussions with States in the light of the overall human rights situation. Children interact with adults, not only within the family and school environments, but within society as a whole. As is evident from the foregoing, the current position with regard to ratification of international human rights treaties brings

members of the Committee into regular contact with States which have ratified only one to three of the major human rights treaties and may therefore be inclined – as has occurred in the past – to discuss sensitive human rights issues in general: the Committee is aware that these issues will not be discussed in any other non-politicized international human rights forum.

The Committee considers in some instances the situation of children's rights in countries which do not recognize a set of international law norms once children living under their jurisdiction become adult (over 18 years old). A State might have ratified the Convention, therefore recognizing, for example, the civil and political rights of children, but the same State may not have acceded to the Covenant on Civil and Political Rights. In other words, a State might have recognized the international norms regulating the right to freedom of religion or expression of a child, but the day this child reaches 18 these very rights are not necessarily guaranteed by the domestic law of the country in which he or she lives: in 51 countries, children might lose their political and civil rights once they attain the age of majority. This unique and paradoxical situation is a challenge facing the Committee which has the legal mandate to discuss and monitor openly the situation regarding civil and political rights of children, although the same States might ignore those rights as enshrined in the Covenant. The same pattern applies to 54 States parties to the CRC which have not ratified the Covenant on Economic, Social and Cultural Rights and to the 87 CRC States parties which have not ratified the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (rights guaranteed by articles 19 and 37 of CRC). This negative perception could, nevertheless, be construed positively. Governments which are traditionally reluctant to give full recognition to certain international human rights norms pertaining to adults, are likely to initiate a transition period during which they limit recognition of those human rights only with regard to children, hopefully to integrate them for all in a later phase.

A childhood deprived of rights

Near-universal ratification has created a situation for Committee members which requires that they

consider progress achieved in relation to children's rights in countries where the human rights status is unsatisfactory and widely criticized by the international community, the Commission on Human Rights among others. When considering those States, the Committee will, in future, have to strike a judicious balance between addressing purely technical and non-political issues and, at the same time, tackling the more politicized human rights matters appropriately. In conjunction with the foregoing, the Committee should, whenever appropriate, openly discuss human rights issues with States, fully exploiting the children's rights approach. In this context, it is ultimately the Committee's choice to act in accordance with the best interests of the child.

INTERPRETATION OF INTERNATIONAL HUMAN RIGHTS LAW

Since its inception, the Committee's interpretation of the Convention on the Rights of the Child has illustrated a modern, integrated approach to human rights based on full endorsement of the principles recognized at the Vienna Conference (1993): the extension to children's rights of the indivisibility and interdependence of all rights poses a challenge to all actors involved in the implementation of the Convention. There has been resistance to this vision from some States and the more conservative experts in international law, but generally the Committee has succeeded in institutionalizing the holistic approach. Nevertheless, as is the rule with legal issues, interpretation remains the key factor. In this regard, the Committee will face the important and strategic task of drafting General Comments to the Convention intended to provide a more detailed interpretation of that legal instrument and increase the impact of its integrated approach. General Comments will be a major tool for improving implementation and monitoring of the rights of children at country level.

Another post-universal ratification challenge which must be addressed is the issue of reservations and declarations made by States parties to the Convention which can, on occasion, severely limit its political and legal impact at country level. Among the 191 States parties, approximately one third (66), have made reservations to or declarations on the Convention.[6] Whenever a State in that category is being reviewed by the Committee, the latter systematically recommends in its Concluding Observations that the State party consider withdrawing its reservation(s) or declaration(s) in keeping with the commitment made by all States in the Vienna Declaration and Programme of Action (1993). As at 1 November 1998, only eight States had withdrawn one of their reservations or declarations.[7]

Additionally, the fact that ten States have made global reservations specifying that in cases of conflict domestic law will prevail over international law, is a matter of concern to the Committee. Are these incompatible with the object and purpose of he [present] Convention and therefore "not [be] permitted" (art. 51. 2,CRC)? Several authors uphold that view, but the Committee has, to date, never taken a strong position in this regard.[8] However, the Committee may, at some point, be required to define unequivocally the "object and purpose of the Convention", a competence which was acknowledged by the chairpersons of all treaty bodies as recently as February 1998.[9] A Discussion Day and/or a General Comment could, therefore, be the appropriate means of attaining a broad-based understanding of the acceptability of reservations/declarations.

DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW

Since its adoption in 1989, the Convention on the Rights of the Child has been unanimously perceived by children's rights advocates as a comprehensive set of binding international norms – a circumstance which has strongly enhanced their status in international law. As an alternative to providing the high standards and norms agreed on by States which are representative of the totality of the world's cultures and regions, the Convention defines minimum standards, illustrating a common agreement and understanding regarding the rights of the child. The Committee was prompt in identifying article 38 of the Convention relating to children in armed conflict as one of the weakest in the treaty, in that its provisions accord full protection only to children under 15 years of age.The drafters of the Convention referred to international humanitarian law which sets the same age limit instead of conforming to the definition of age set by article 1. In order to remedy this loophole,

the Committee took several measures which included the request that the Commission on Human Rights envisage drafting an optional protocol to the Convention. This measure was agreed on by Commission members : since 1994, a working group has held four sessions for a drafting process which has encountered obstacles from the outset, mainly on the matter of raising the age of participation in armed conflict to eighteen years and the definitions of "direct" and "indirect" participation of children in armed conflict.

Member States of the Commission on Human Rights also decided that improving the legal protection of children against sale, prostitution and pornography, as defined particularly by articles 34 and 35 of the Convention, should move forward in parallel. Another drafting exercise with regard to an optional protocol was launched in 1994 – independently of a request by the Committee. Negotiations among drafters have not, so far, led to any concrete results. One group of States opted for a broad definition of the sale of children; another group envisages a narrowly focused conceptual framework, namely the sexual exploitation of children.

Insofar as the Committee's work is concerned, the situation regarding those two optional protocols is clear indication that, in spite of the near universal ratification of the Convention, consensus among States on children's rights is still fragile, and it might even dilute the Convention's full political impact in the long term. The draft Optional Protocol on sale of children, child prostitution and child pornography fully reinforces the paradox between the need, on the one hand, to enforce existing international norms and, on the other, the effort expended to develop new norms. Numerous international norms and mechanisms already exist, including the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination Against Women, the 1995 Beijing Platform for Action, the 1996 Stockholm Declaration and Plan of Action, two UN Programmes of Action, two Special Rapporteurs, several UN working groups, the International Labour Office (ILO), the United Nations High Commissioner for Refugees(UNHCR) as well as humanitarian law conventions and provisions.[10] In addition to this impressive range of provisions, programmes of action and legal instruments, there is the very real risk that an optional protocol could have the effect of diluting existing legal tools for preventing and combating the sexual exploitation of children. A protocol which is not based on a large consensus might propose an inappropriate message to States: develop international law and programmes instead of focusing on their implementation.

Another difficult situation that the Committee is likely to face in the future concerns the acceptance of and potential reservations relative to the optional protocols to be adopted. One of the major strengths of the Convention is obviously its near-universal ratification. If the optional protocols are finally adopted by the Commission, their ratification rate will again be crucial. In the light of current discussions generated by those two instruments, there is a certain apprehension that their ratification might become somewhat problematic for many States. Having two optional protocols on two major protection issues – armed conflict and sexual exploitation – which are either discounted or ratified with reservations by many of the 191 States parties to the Convention would affect the credibility both of the Convention and of the Committee. It might give encouragement to some States to lessen their commitment and obligations under the Convention as they would no longer be required to endorse the highest international protection norms agreed on.

The Committee will be in a position to reinforce its own position following its decision to draft General Comments to the Convention – including one on children in armed conflicts and another on the sale of and trafficking in children. General Comments adopted by treaty bodies provide States with the in-depth interpretation of provisions recognized by each treaty. The Comments are based on the jurisprudence of each treaty body. When drafting the optional protocols, States have to ensure that they are fully consistent with the provisions and principles of the Convention, including the General Comments. This might prove to be a difficult exercise: thought should be given to the possible outcome if, on the matter of the definition of "sale and trafficking", the content of a General Comment on articles 34 and 35 of the Convention contradicts the provisions drafted and adopted by States in an optional protocol on the same articles.

REFORM OF THE UNITED NATIONS

Over the past fifty years of the United Nations' existence, human rights have been increasingly

recognized and are, today, finally receiving their deserved importance. On assuming his responsibilities as Secretary-General early in 1997, Mr. Kofi Annan and his Programme of Reform[1] ushered in a new era for human rights within the Organization's membership. Undervalued and under-resourced for decades, human rights have now been significantly upgraded both politically and institutionally. Even if financial resources allocated by Member States are still markedly scarce – less than 2% of the regular budget of the UN – since the nomination of Mrs. Mary Robinson, the Office of the High Commissioner for Human Rights has been upgraded and strengthened. In addition to a new vision, based on a more proactive approach and placing emphasis not only on promotion activities but also on the more controversial protection issues, one of the major challenges of the Sercretary-General's Reform Programme is to integrate the human rights approach into all UN activities.

The direct impact of the UN reform programme on the work of the Committee on the Rights of the Child is significant. With a highly visible High Commissioner for Human Rights – whose public statements are forceful in comparison with past UN diplomatic language – members of all treaty bodies might feel more encouraged in their efforts to voice sensitive issues. However, one of the major impacts of the UN reform on the work of the Committee resides in the efforts to integrate a human rights dimension into all aspects of the work of the UN; more specifically, into its operational and technical agencies, namely UNDP, UNHCR, UNICEF, ILO, UNESCO, WHO. Human rights will, in consequence, also assume a programmatic approach, becoming fully incorporated into the measures taken by those UN agencies – in certain instances through the UN Development Assistance Framework (UNDAF) at country and regional levels. Over the past few years, UNICEF has regularly adopted country programmes which were drafted within the framework of the Convention and, in the case of existing Concluding Observations, taking the Committee's recommendations fully into account. ILO and UNHCR have followed the same process. UNDP, WHO, UNAIDS and others are starting to integrate the work of human rights treaty bodies into their respective areas of intervention. In this regard, the High Commissioner for Human Rights signed a comprehensive memorandum of understanding with UNDP on 4 March 1998 to, *inter alia*, take all measures for the full incorporation of human rights, including children's rights, into all development-related decisions, policies and programmes. This new approach should bolster the existing linkage between the work of UN human rights treaty bodies and the realities at country level.

ENLARGED MEMBERSHIP

On 12 December 1995, the Conference of States parties to the Convention adopted an amendment submitted by Costa Rica to its article 43(2) proposing an increase in the Committee's membership from 10 to 18. To be implemented, this decision (already endorsed by the General Assembly), still requires formal confirmation by two-thirds of the States parties (120). As of 1 November 1998, 47 instruments of acceptance have been deposited; and 15 other States parties have notified their acceptance of the amendment.

The Committee could derive several advantages from an increase in its membership, namely an increased capacity to deal with its heavy workload with a resultant reduction in the existing backlog of reports which represents a two-year long waiting list; the country rapporteur mechanism could be reintroduced, establishing conformity between the Committee and all the other treaty bodies. A more radical solution which no treaty body has so far adopted would be to divide the Committee into 2 or 3 subcommittees, each considering its own set of States reports. Politically, this solution is debatable in that each State would be considered only by a particular section of the Committee.

In principle, an increased membership would also enable the Committee to strengthen its expertise: this is crucial in view of the multidisciplinary nature of the Convention. The Committee's legal expertise is understandably weakened by the fact that less than half of its members are jurists. An additional eight Committee members would also introduce a more equitable geographical and linguistic balance within the group: it should be noted that, since 1991, Asia in particular, but Spanish-speaking Latin America as well, continue to be somewhat under-represented. Finally, increasing its membership would offer more flexibility to the Committee. The absence of even a few members creates disproportionate problems in view of the group's limited numbers.

The major challenge facing an enlarged Committee is linked to the level of support provided by the United Nations. There is no guarantee that the level of financial support will reflect a growth rate pro-

portionate to an enlarged Committee membership. It should be noted, nonetheless, that since 1997 the Committee has received substantive support from the High Commissioner's Plan of Action for strengthening implementation of the Convention on the Rights of the Child.

UNIVERSAL RATIFICATION

Ratification by only two additional States – the United States and Somalia – would enable the Convention to be the first legal instrument in the field of human rights to attain universality. The ratification process in those two countries, however, remains slow. This situation continues to frustrate the Committee's hopes of early universal ratification. A strategy could, nonetheless, be devised – in collaboration with the Committee's traditional partners – for resolving this issue.

EXAMINATION OF STATES' PERIODIC REPORTS

For the past six years, the Committee has examined exclusively the initial reports of States (some 100 reports) developing over time a sophisticated approach. In keeping with most human rights treaty bodies, the Committee's work is carried out on an ongoing basis and initial reports and discussions with States parties are considered as a first approach mainly targeted at establishing a climate of confidence. Confrontation is extremely rare, although it has taken place in a few cases.

In September 1998, the Committee started its consideration of the second periodic reports submitted by States thus ushering in a new era.[12] The main advantage of a system of periodic reporting is that it offers tools for evaluating progress achieved by States in fulfilling their international obligations. Using previous reports and its own Concluding Observations, as well as information provided by a wide diversity of sources, treaty bodies have the capacity to assess achievements and constraints. In the case of the Committee which monitors a treaty characterized by its extremely broad scope, its members may be required to adopt a less comprehensive approach in favour of one which is more specific and targeted, based on prioritizing the importance of issues emerging in each country – an exercise likely to pose a serious challenge for the Committee.

Paulo David

NOTES

[1] See *The United Nations and Human Rights*, UN, New York, 1984, p. 28.

[2] In this case, the word "States" also includes those territories which are not fully recognized as States but which have been given the legal capacity to ratify international treaties. Samoa and Cook Islands are two examples of these entities.

[3] The six major international human rights treaties are the International Convention on the Elimination of All Forms of Racial Discrimination (CERD-1965), the International Covenant on Civil and Political Rights (ICCPR-1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR-1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-1979), the Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment (CAT-1984), and the Convention on the Rights of the Child (CRC-1989). A seventh treaty, the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted in 1990 by the UN General Assembly, had, as at 1 November 1998, been ratified by only 9 States parties and therefore has not yet entered into force. This Convention requires twenty ratifications by States to enter into force.

[4] Those twelve States are: Brunei Darussalam, Cook Islands, Djibouti, Kazakhstan, Kiribati, Marshall Islands, Federated Sates of Micronesia, Nauru, Niue, Oman, Palau and Tuvalu.

[5] For full text of acronyms, see footnote 2.

[6] See Reservations, Declarations and Objections relating to the Convention on the Rights of the Child, CRC/C/2/Rev. 7, May 1998.

[7] Croatia, Denmark, Myanmar, Norway, Pakistan, Thailand, the United Kingdom and Yugoslavia.

[8] See for example Marie-Françoise Lücker-Babel, "Les réserves à la Convention relative aux droits de l'enfant et la sauvegarde de l'objet et du but du traité international", *European Journal of International Law*, Law Books in Europe, Vol. 8, No. 4, pp. 664-682, 1997.

[9] Report of the ninth meeting of chairpersons of the United Nations human rights treaty bodies, Geneva, 25-27 February 1998, paras. 17-18.

[10] These mechanisms and international norms include the Special Rapporteur on sale of children, child prostitution and child pornography and the Special Rapporteur on violence against women; the UN working groups on contemporary forms of slavery and on disappearances, respectively; the 1926 and 1956 ILO conventions on slavery, the UN Programme of Action on the sale of children, child prostitution and child pornography and that on the prevention of traffic in persons and the sexual exploitation of the prostitution of others; and the Bill of Rights and the Tourist Code (1985).

[11] The reform proposed by Kofi Annan is described in *Renewing the United Nations: a programme for reform*, General Assembly, New York, A/51/950, 14 July 1997, 95 p.

[12] As at 1 November 1998, the Committee had received 19 periodic reports.

The UN Voluntary Trust Fund for the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination

Racism is not confined to any one nation or to any one continent. It is pervasive and multifaceted. It is therefore entirely appropriate that the international community should continue to give the issue serious consideration.

Events over the past few years give grounds for both optimism and renewed vigilance. We have witnessed the defeat of apartheid in South Africa, a triumph for the universality of human rights and the defeat of a domination based on race. We have also witnessed campaigns of "ethnic cleansing" and genocide, where the determinants of an individual's survival are governed by considerations of race, ethnicity or religion. It may be argued that the problem has become more severe. Despite continuing efforts, contemporary forms of racism, racial discrimination, xenophobia, and related intolerance persist and are growing in magnitude. We have seen that as societies face the challenges attendant on economic difficulties and modernization, racial minorities and immigrants all too often become targets of discontent. The lesson is clear: the victory over apartheid must not be interpreted as an excuse for complacency but as a renewed call to action.

Commitment to the dignity and equality of each human being, irrespective of race and the determination to combat racism and racial discrimination globally, constitute the common denominator among the actions of the United Nations to the present. One of the landmark actions was the Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963. As a follow-up measure to the Declaration, the General Assembly adopted the International Convention on the Elimination of All Forms of Racial Discrimination on 21 December 1965, conferring a more precise legal form on many of the concepts embodied in the Declaration.

The International Convention is the United Nations' primary legal instrument in the fight against racial discrimination. However, it has still not been ratified by some Governments. More importantly, article 14 of the Convention, which allows individuals to exercise the right to petition, has been accepted by only 25 States. As has been mentioned by the Committee on the Elimination of Racial Discrimination, much of the responsibility lies with Governments, since legislation, education and other appropriate measures constitute the primary mechanisms for militating against racial discrimination in the future, redressing the effects of racial discrimination in the past, and building societies anchored in tolerance and equality in the years to come.

The United Nations' fight against racism has been accelerated within the framework of three Decades for Action: the first was launched in 1973. However, despite the efforts of the international community, the principal objectives of the First and Second Decades for Action have not been fully realized: millions of human beings continue to be the victims of racism and racial discrimination. Policies and programmes to eliminate racism and racial discrimination should be reinforced through the advocacy activities of the Programme of Action for the Third Decade (1993-2003) which underline the pivotal role of human rights education in guaranteeing respect for human rights against the likely resurgence of intolerance and xenophobia.

The main objective of the World Conference on Racism and Racial Discrimination, Xenophobia and Related Intolerance – to be convened in 2001 in response to General Assembly resolution 52/111 – is the eradication of the evils of racism, racial discrimination, xenophobia and related intolerance by instituting practical measures in terms of prevention and education within the framework of the existing instruments.

The Commission on Human Rights, by resolution 1998/26, specifically recommended that the activities of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination be focused on the preparatory process for the World Conference and that the High Commissioner for Human Rights organize symposia, seminars and

consultations at global level on racism and racial discrimination, in each of the years from 1998 to 2001.

The General Assembly and the Commission on Human Rights requested that a number of activities be implemented in the context of both the preparatory process for the World Conference and the Conference itself. Voluntary contributions (through the United Nations Trust Fund), are central to putting these activities into effect if the objectives defined by the General Assembly for the World Conference are to be attained.

THE UNITED NATIONS TRUST FUND FOR THE PROGRAMME OF ACTION FOR THE THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION

The United Nations Trust Fund for the Programme of Action to Combat Racism and Racial Discrimination was established by the General Assembly, by resolutions 3057(XXVIII) (paragraph 17 of the Annex) of 2 November 1973, 38/14 of 22 November 1983 and 48/91 of 20 December 1993, for financing activities organized by the Secretariat under the Programme of Action.

The Fund is administered by the Secretariat in accordance with the Financial Regulations and Rules of the United Nations within the framework of the Office of the High Commissioner for Human Rights.

ACTIVITIES ORGANIZED IN 1997

Two seminars were made possible, in 1997, in the context of the implementation of the Programme of Action for the Third Decade and in accordance with the level of funds available. The first, on Immigration, Racism and Racial Discrimination, was held in Geneva from 5 to 7 May 1997, to examine the contemporary forms and kinds of racism and racial discrimination with which immigrants are confronted and to recommend appropriate solutions. The second addressed the role of the Internet under the relevant provision of the International Convention on the Elimination of all Forms of Racial Discrimination, and took place in Geneva from 10 to 14 November 1997; the objective was to identify methods and resources for guaranteeing the responsible utilization of the Internet. The experts concluded that there was extensive abuse of the Internet by the proponents of theories of racial superiority – a circumstance which contravenes the provisions of the Convention – and that States parties to the Convention should take appropriate steps to have these activities discontinued.

ACTIVITIES BUDGETED FOR 1998

The resources allocated for financing three activities in 1998 amount to US$ 94,000.

The priority activity, a study entitled "Economic factors contributing to the perpetuation of racism and racial discrimination", is in preparation and on a budget line of $27,000. The study will identify practices leading to the economic deprivation or exclusion of ethnic, racial, national and linguistic minorities as well as indigenous populations and migrants.

Two seminars, both in preparation, are scheduled to take place in 1999. The first, on the enactment of national legislation to combat racism and racial discrimination, will take place in Geneva. The second, on the flow of refugees resulting from ethnic conflicts or the political restructuring of multi-ethnic societies, is likely to be held in Africa.

ACTIVITIES PLANNED FOR 1999

In accordance with the above-mentioned resolutions of the General Assembly and the Commission on Human Rights, the Office of the High Commissioner for Human Rights envisages the following symposia, seminars and studies as preparatory to the World Conference and for financing under the Fund in 1999:

– a seminar on the right to equal treatment before tribunals and other judicial institutions;

– two regional seminars on nationalism, ethnonationalism and human rights; and

– a study on educational measures to combat racial prejudice and discrimination, serving to promote the principles of the United Nations.

The Fund would require an additional amount of approximately $ 300,000 to facilitate the implemen-

tation of activities in 1999. The Government of Japan has pledged $ 7,500 for that purpose.

ACTIVITIES PLANNED FOR THE YEAR 2000

The following activities are likely to be associated with the organization, in the year 2000, of the preparatory Committees of the World Conference:

– a seminar on the eradication of incitement to racial hatred and discrimination, and on the role of the mass media in combating or disseminating racist theories;

– a seminar on the role of trades unions in combating racism and racial discrimination in employment;

– a seminar for the training of national experts, including non-governmental organizations, on the enactment of national legislation to combat racism and racial discrimination and the right to equal treatment before tribunals and other judicial institutions.

URGENT APPEAL FOR CONTRIBUTIONS

The General Assembly and the Commission on Human Rights have expressed concern over the inadequate level of contributions received and consider the early receipt of adequate additional voluntary contributions to be essential to the preparatory process for the World Conference as set out by the General Assembly.

The High Commissioner for Human Rights, Ms. Mary Robinson, is also concerned that the inadequate level of contributions received is likely to circumscribe the Fund's mandate. On 27 October 1998, the High Commissioner made an urgent appeal to all Governments for supplementary contributions to the Fund, if possible by March 1999, prior to the meeting of the Commission on Human Rights. This would enable the High Commissioner to report to the Commission on the status of contributions received and allocate funds for the organization, in 1999, of the preparatory seminars and studies associated with the World Conference.

REPORTS OF THE SECRETARY-GENERAL

The Secretary-General reports annually to the General Assembly on the implementation of the Programme of Action. The most recent report (A/53/305) provides updated information on the financial status of the Fund and on the activities financed from its resources.

VOLUNTARY CONTRIBUTIONS

The Fund can receive voluntary contributions from Governments, non-governmental organizations and other private or public institutions. Both the General Assembly and the Commission on Human Rights recognize the laudable and generous efforts by donors who have so far contributed to the Fund.

HOW TO CONTRIBUTE TO THE FUND

Governments, institutions, non-governmental organizations, foundations, as well as individuals can contribute to the Fund. Contributions can be made at any time to the following accounts specifying **"For the United Nations Voluntary Trust Fund for the Programme of Action of the Third Decade to Combat Racism and Racial Discrimination – Account UB".**

Payments should be made to:

The United Nations Geneva General Fund
UBS AG
P.O. Box 2770, CH 1211 Geneva 2
Accounts:
CO-590-160.1 for contributions in US dollars
CO-590-160.0 for contributions in Swiss Francs.

A receipt will be issued for every contribution made and the contribution will be mentioned in the report to the General Assembly.

Further information about the Fund can be obtained from the Fund's secretariat. Contact: Ms. Eulalia Ortado, Office of the High Commissioner for Human Rights, United Nations, 1211 Geneva 10, Switzerland, phone: 0041-22-9179266/9179145, fax: 0041-22-9179022.

Sandra Aragon Parriaux

The Voluntary Fund for Technical Cooperation in the Field of Human Rights

In adopting the Universal Declaration of Human Rights, the United Nations underlined the importance of ensuring that human rights enjoy the full protection of the law, a principle which continues to guide the Organization's activities for promoting and protecting human rights. Accordingly, since 1955, the United Nations Technical Cooperation Programme in the Field of Human Rights has been assisting States, at their request, to build and strengthen national structures with a direct impact on the overall observance of human rights and the maintenance of the rule of law.

A decade after the entry into force of the Charter of the United Nations, and following activities in human rights assistance initially of an ad hoc nature, the General Assembly, on 14 December 1955, officially established the United Nations Programme of Advisory Services in the Field of Human Rights by resolution 926 (X) which specifically authorized the Secretary-General to respond to Governments' requests, under that Programme, for the provision of assistance in the field of human rights: in an initial phase, this would include the advisory services of experts, fellowships, scholarships and seminars. The General Assembly subsequently expanded the services available under the programme to include regional and national human rights training courses. The establishment of the Voluntary Fund for Technical Cooperation in the Field of Human Rights by the Secretary-General in November 1987, pursuant to Commission on Human Rights resolution 1987/38 and Economic and Social Council decision 1987/147, further bolstered the scope of the Programme as the objective of the Fund is to provide additional financial support for practical activities focused on the implementation of international conventions and other international instruments on human rights promulgated by the United Nations, its specialized agencies or regional organizations.

In the course of the past decade, the programme has expanded from an average of 2 activities per year to several hundred major activities in over 40 countries worldwide and the majority of new OHCHR field presences are linked to technical cooperation programmes for furthering democracy, development and the rule of law.

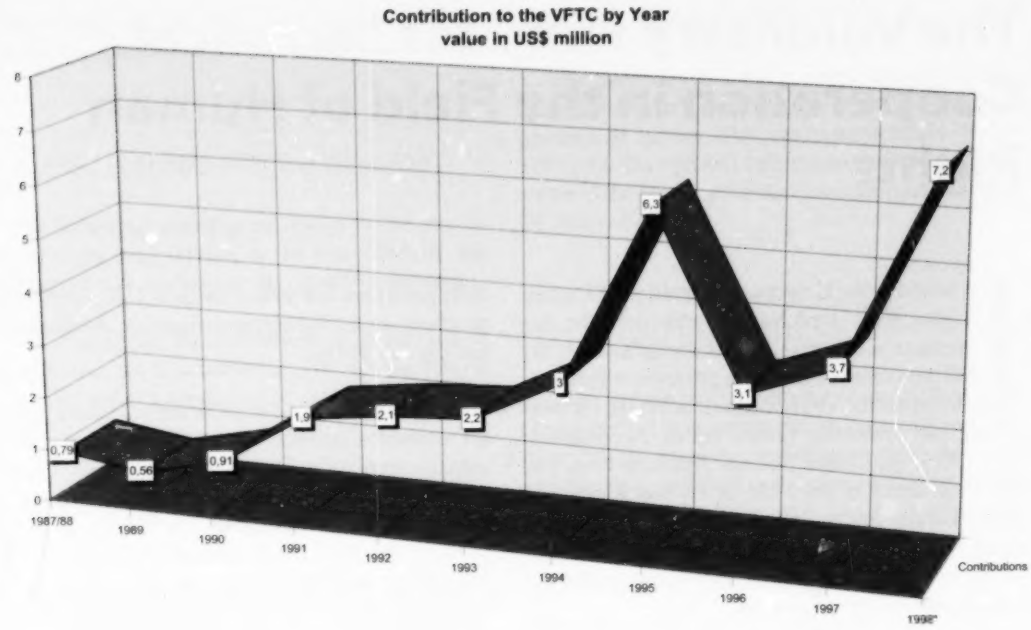
The programme is comprehensive, making practical assistance available for putting national and regional human rights infrastructures in place. Certain components focus on the incorporation of international human rights standards into national laws and policies; the building or strengthening of national institutions capable of promoting and protecting human rights and democracy under the rule of law; the formulation of national plans of action for the promotion and protection of human rights; human rights education and training and promoting a culture of human rights. Assistance of this kind now also encompasses grants, provision of information and documentation as well as assessment of domestic human rights needs.

The pivotal role of technical cooperation facilitates a substantial input on the part of the Office of the High Commissioner for Human Rights into integrated development cooperation, for achieving the right to development and "international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all".

Technical cooperation activities are seen by the United Nations as a complement to, but never a substitute for, the monitoring and investigative activities of the human rights programme.

The Programme is funded from the regular budget of the United Nations and from the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights. The Voluntary Fund became operational in 1988 and is administered by a Board of Trustees; it has received an average of US$ 3 million per year in contributions and pledges. As at end November 1998, it had already received more than $ 7.5 million in contributions, and pledges of $ 3.5 million, for the current year.

VOLUNTARY FUNDS



* As at November 1998

Programme development, implementation, support and follow-up are carried out by OHCHR's Activities and Programmes Branch (APB). A coordinator of technical activities, in cooperation with the regional coordinators and country desk officers concerned, ensures the maintenance of a programmatic framework for the technical cooperation programme and consistency in the application of existing technical cooperation practices and procedures.

Technical cooperation projects are developed in close cooperation with the requesting Government and the United Nations agencies represented in the country concerned. Implementation of comprehensive, long-term projects may require project officers to be based in the country. Currently, there are OHCHR technical cooperation offices in El Salvador, Gaza, Guatemala, Malawi, South Africa and Togo. In July 1998, the Regional Human Rights Office for Southern Africa was established jointly by OHCHR and UNDP. The Office will advise, assist and keep Governments in the region – as well as the Southern Africa Development Community (SADC) secretariat – informed of progress in human rights, democracy and the rule of law. OHCHR also draws on a roster of experts with the professional background required in key areas addressed under the programme. In-house expertise is also utilized to implement technical cooperation activities.

As stated in the Secretary-General's 1998 report, it is the policy of the High Commissioner that all assistance provided under the technical cooperation programme be coordinated with other United Nations bodies and agencies. This requires a permanent dialogue with those agencies and programmes most directly concerned so as to enhance programme efficiency and avoid unnecessary duplication. In 1997, for example, several projects to establish national institutions were implemented on a joint OHCHR - UNDP financial basis. In addition, the programme provided substantive input into the drafting of Country Strategic Notes in several countries at the request of the United Nations Resident Coordinator. Under the United Nations programme approach outlined in General Assembly resolution 44/211, the technical cooperation programme works closely with United Nations agencies and programmes active in the country concerned, cooperating with the Organization's Resident Coordinator in ensuring that the OHCHR contribution is part of a coordinated United Nations system intervention and complementary to the projects of other actors in support of the Government's goals, programmes and plans of action: the common denominator is coordinated capacity-building at national level with a view to sustained progress through development and the eventual obsolescence of external assistance.

VOLUNTARY FUNDS

OHCHR also works closely with regional organizations which include the Council of Europe, the Organization of African Unity and the African Commission on Human and Peoples' Rights, the Organization of American States and the Inter-American Commission, as well as the Organization for Security and Cooperation in Europe, in implementing technical cooperation projects in specific regions.

In accordance with a mandate to consolidate system-wide efforts for the provision of human rights technical assistance, the High Commissioner continues to emphasize that the integration of human rights – including the right to development – into the full range of United Nations technical cooperation activities, offers the best means of achieving an environment, both nationally and internationally, in which human rights can be fully respected and effectively protected.

In response to a steadily growing number of requests by Governments for assistance, there has been a substantial increase in the number of technical cooperation activities implemented by OHCHR in recent years: consequently, in the interest of project implementation of a high standard, greater emphasis has necessarily been placed on a functional methodology and on cost-effective projects, efficient project formulation, management, monitoring and evaluation.

Technical cooperation projects are approved by the High Commissioner on the advice of the Board of Trustees of the Voluntary Fund which also monitors programme expenditure. Status reports on the Voluntary Fund and on project activities are prepared quarterly and made available to Member States in the interest of maximum transparency and accountability in the management of technical cooperation. The advice of OHCHR's senior management is channelled through both a project review committee and a senior policy committee to the entire project cycle.

IMPLEMENTATION

The Voluntary Fund for Technical Cooperation in the Field of Human Rights is funded from voluntary contributions by Governments. Contributions amounting to some $ 32 million from donor countries have been received since the Fund's inception. Specific projects may also be co-funded by partners in the United Nations system. Whatever the source of funding, projects are implemented within the framework of the technical cooperation programme administered by OHCHR.

The Fund provides technical cooperation to countries in response to the stated priority needs of Governments with regard to human rights assistance. Programmes are designed to address the needs of the requesting country. Governments requesting assistance, UNDP and other multilateral and/or bilateral agencies concerned are closely associated at the programme identification stage. Technical cooperation is granted in the form of programmes with the focus on national capacity-building; national institution-building; human rights education; and for promoting economic, social and cultural rights as well as the right to development.

Programmes are operational in more than 40 countries. Among the numerous activities buttressing national capacities for protecting and promoting human rights, the following are accorded a high priority importance:

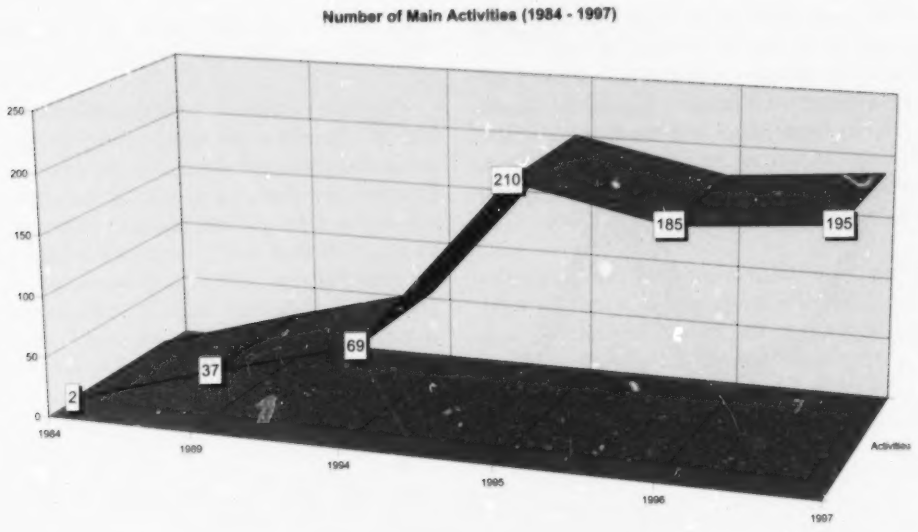
- establishing or strengthening national human rights institutions;
- training of government officials, lawyers, judges, the armed forces, police and prison officials;
- penal reform; and
- broad-based education and public information for the respect of human rights.

BOARD OF TRUSTEES OF THE VOLUNTARY FUND

A Board of Trustees was created in 1993 to assist in fund-raising and to provide expert advice and support for the Voluntary Fund. Members are appointed by the Secretary-General for three years and are chosen for their independence and extensive experience in the field of human rights and technical cooperation. The Board meets biannually to review new projects and provide management guidance. At its July and November/December 1998 sessions, the Board reviewed and endorsed a total of nineteen new project proposals and eight ongoing projects.

In her November 1998 address to Member States on funding requirements, the High Commissioner for Human Rights stated that OHCHR had so far received over $ 31 million in the various trust funds and had firm pledges for an additional $ 5 million, equivalent to 68% of projected requirements for 1998: a 50%

VOLUNTARY FUNDS



increase, nonetheless, over the level of extra-budgetary funds received in 1997 ($ 24 million). The High Commissioner considered it significant that in the course of this year the number of countries contributing to OHCHR's various funds had increased by 25%, from 46 in 1997 to 58 as at November of the current year: a trend reflecting her "desire to see more and more Member States take an active part, in keeping with their capacity to contribute, in the activities of the Office of the High Commissioner for Human Rights".

The first five members of the Board of Trustees were appointed by the Secretary-General in December 1993, and reappointed in September 1996. The current members of the Board of Trustees are:

- **Mrs Leila I. Takla (Egypt), Chairperson**
- **Mrs Anne-Marie Lizin (Belgium), Vice-Chairperson**
- **Mr. Kinhide Mushakoji (Japan)**
- **Mr. Luis Pérez Aguirre (Uruguay)**
- **Mr. Krzysztof Skubiszewski (Poland)**

In addressing the Board of Trustees, the High Commissioner for Human Rights underlined "the unique and significant role played by the Technical Cooperation Programme and the Voluntary Fund in the overall UN mandate in the field of human rights(...) Our demands are growing. I count on the assistance of the Board of Trustees in ensuring that the necessary funds are raised and made available to match our requirements" for 1999 which are at a record high.

Gianni Magazzeni

HOW TO CONTRIBUTE TO THE FUND

Governments, institutions, non-governmental organizations, foundations, as well as individuals can contribute to the Fund. Contributions can be made at any time to the following accounts specifying **"For the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights".**

Payments should be made to:

The United Nations Geneva General Fund
UBS AG
P.O. Box 2770, CH 1211 Geneva 2
Accounts:
CO-590-160.1 for contributions in US dollars
CO-590-160.0 for contributions in Swiss Francs and other currencies.

Further information about the Fund can be obtained from the Fund's secretariat.

Contact: Mr. Gianni Magazzeni, Technical Cooperation Coordinator, Office of the High Commissioner for Human Rights, United Nations, 1211 Geneva 10, Switzerland, phone: 0041-22-9179212, fax: 0041-22-9179014

Le Protocole à la Charte africaine des droits de l'homme et des peuples relatif à l'institution d'une Cour

L'idée de créer une Cour régionale des droits de l'homme en Afrique remonte à 1961, à la Conférence de juristes africains organisée cette année à Lagos sous les auspices de la Commission internationale de juristes. Elle n'a pas été concrétisée pendant près de quatre décennies à cause de la situation politique qui a prévalu sur le continent, caractérisée alors par une gouvernance autocratique presque généralisée. Lors de l'adoption de la Charte africaine des droits de l'homme et des peuples (Charte africaine) en 1981, la création d'une Cour fut refusée. La Charte institua une Commission chargée de la promotion et de la protection des droits de l'homme et des peuples aux pouvoirs fort limités. Dix années d'activités de celle-ci ont confirmé ses faiblesses et insuffisances. En adoptant le 9 juin 1998 à Ouagadougou (Burkina Faso) le Protocole à la Charte africaine instituant une Cour africaine des droits de l'homme et des peuples (Cour africaine)[1], la Conférence des Chefs d'Etat et de gouvernement de l'Organisation de l'Unité africaine (OUA) a cherché à renforcer le système régional africain de protection des droits de l'homme et des peuples. Elle parachève ainsi un processus de réforme initié depuis sa session de Tunis en juin 1994.[2]

Le but de la présente étude est de procéder à un bref commentaire du Protocole à la lumière des deux autres mécanismes judiciaires régionaux des droits de l'homme existants, à savoir la Cour européenne des droits de l'homme (Cour européenne) et la Cour interaméricaine des droits de l'homme (Cour interaméricaine). Mais il convient de rappeler d'abord brièvement le mécanisme de contrôle institué par la Charte africaine.

LE MECANISME DE CONTROLE INSTITUE PAR LA CHARTE AFRICAINE

La Charte africaine a institué deux organes de contrôle du respect de ses dispositions : la Conférence des Chefs d'Etat et de gouvernement de l'OUA et la Commission africaine des droits de l'homme et des peuples (Commission africaine). La Commission africaine a pour fonctions essentielles la promotion et la protection des droits de l'homme et des peuples garantis par la Charte africaine et les autres instruments internationaux pertinents (article 30 de la Charte africaine). Dans le cadre de sa fonction de protection, la Commission africaine a pouvoir de recevoir des communications émanant des Etats et dirigées contre d'autres Etats parties à la Charte (art. 47, 48 et 49) et les autres communications (art. 55), parmi lesquelles notamment les plaintes qui émanent d'organisations non gouvernementales et/ou d'individus. Il convient toutefois de mentionner que, dans ces deux cas, la Commission africaine n'a pas de pouvoir de décision. Elle peut enquêter, se mettre à la disposition des parties, tenter un arrangement amiable et, le cas échéant, instruire les affaires, mais elle adresse ses rapports pour décision et éventuellement pour publication à la Conférence des Chefs d'Etat et de gouvernement. Il s'ensuit que cette instance est le véritable organe de décision du mécanisme régional africain des droits de l'homme, à cause de sa prééminence dans le processus décisionnel.

Sur le plan pratique, la Commission africaine n'a jusqu'à ce jour été saisie d'aucune communication interétatique[3]. Par ailleurs, les 212 « autres » communications dont elle a été saisie en 11 ans d'existence n'ont donné aucun résultat concret, comme le confirme l'Ambassadeur égyptien Ibrahim A. Badawi El-Sheik lui-même,[4] membre et ancien président de la Commission africaine. Les limites de cet organe, l'émergence et la consolidation progressive de l'Etat de droit en Afrique, l'évolution positive de l'attitude des Etats africains à l'égard de la juridiction internationale en général, la création récente du Tribunal pénal international pour le Rwanda ainsi que la perspective de la création imminente d'une Cour pénale internationale ont, sans aucun doute, joué un rôle de catalyseur dans le processus d'élaboration et d'adoption du Protocole sous examen qui fixe les règles du fonctionnement de la Cour africaine.

LE FONCTIONNEMENT DE LA COUR AFRICAINE

Bien qu'instituée comme « complément » de la Commission africaine, la Cour africaine possède des compétences, une organisation et une procédure qui lui sont propres.

COMPÉTENCE

La Cour africaine a des compétences de nature contentieuse et consultative.

En matière contentieuse, en vertu de sa compétence *ratione personae*, elle a pouvoir de connaître, en principe, des affaires émanant de la Commission africaine; de l'Etat partie au Protocole qui a saisi celle-ci; de l'Etat mis en cause devant la Commission; de l'Etat partie au Protocole dont est ressortissante la victime présumée d'une violation des droits garantis par la Charte africaine ou d'une organisation intergouvernementale africaine pour les questions relevant de sa compétence. La Cour africaine peut également être saisie par un Etat partie au Protocole agissant comme tiers intervenant, lorsque celui-ci estime que ses intérêts sont en cause dans une instance à laquelle il n'était pas initialement engagé (article 5 du Protocole). Par ailleurs, elle peut, aux termes du paragraphe 3 de cette dernière disposition, recevoir des plaintes individuelles ou celles d'organisations non gouvernementales ayant le statut d'observateur auprès de la Commission africaine, à la condition que l'Etat mis en cause ait reconnu au préalable sa compétence pour recevoir de telles affaires, conformément à l'article 34, paragraphe 6 du Protocole. Il convient de mentionner en effet que s'il était largement acquis que la Cour africaine devait être compétente pour recevoir des plaintes individuelles ou d'organisations non gouvernementales, le débat est longtemps demeuré vif entre partisans d'une juridiction obligatoire (*de plano*) de la Cour et ceux d'un système facultatif. Cette dernière solution qui reflète l'état du droit procédural international des droits de l'homme a prévalu.

En matière consultative, la Cour africaine a compétence de donner des avis, à la demande d'un Etat ou d'une organisation reconnue par l'Organisation de l'Unité africaine (OUA), sur toute question juridique concernant la Charte africaine ou tout autre instrument africain applicable et relatif aux droits de l'homme. Les Cours européenne (Protocole n° 2 à la Convention européenne de 1953) et interaméricaine (article 64 de la Convention américaine) possèdent une compétence similaire. Evidemment, de tels avis n'ont pas un effet obligatoire mais, dans la pratique, ils peuvent contribuer à une interprétation dynamique des Conventions relatives aux droits de l'homme.

ORGANISATION

Du point de vue de sa composition, la Cour africaine comporte, à l'instar de la Commission africaine, onze (11) juges élus par les Etats membres de l'OUA, pour un mandat de six ans renouvelable une seule fois (art. 11, 12 et 15 du Protocole). Cette structure ressemble à celle de la Cour interaméricaine, dont les sept (7) juges sont élus parmi les candidats ressortissants des Etats membres de l'Organisation des Etats américains (OEA) pour une durée de six ans et ne sont rééligibles qu'une seule fois (article 54 de la Convention américaine). A la différence des Cours africaine et interaméricaine, la Cour européenne comprend autant de juges qu'il y a d'Etats parties à la Convention européenne, élus pour un mandat de neuf ans renouvelable sans limitation, sur la base d'une liste de trois candidats par pays.[5]

PROCÉDURE

La Cour africaine est saisie de plaintes interétatiques et individuelles ou d'Organisations non gouvernementales (ONG). Dans les deux cas, elle déterminera les conditions d'examen de ces plaintes dans son Règlement intérieur en tenant compte de la complémentarité entre elle et la Commission africaine (article 8 du Protocole). La Cour africaine pourrait utilement s'inspirer, sur ce plan, en matière de requêtes individuelles, de l'approche suivie dans le cadre européen d'après la procédure établie par le Protocole n° 9 à la Convention européenne. Dans le système établi à l'origine, lorsque la Commission européenne clôture l'instruction d'une requête individuelle, elle rédige un rapport constatant les faits et comportant son avis sur le point de savoir si ceux-ci révèlent une violation des obligations conventionnelles par l'Etat mis en cause. La Commission transmet ce rapport, avec ses propositions, au Comité des Ministres. Si, dans les trois mois suivant la transmission du rapport, la Cour européenne n'est pas saisie, le Comité décide d'entériner ou non ledit rapport. Aux termes du Protocole n° 9, pendant ce délai de trois mois, le requérant peut, sous

certaines conditions, saisir la Cour.[6]

L'article 9 du Protocole prévoit que la Cour africaine, lorsqu'elle est saisie, peut tenter de parvenir à un règlement amiable de l'affaire. Cette disposition a divisé les experts juridiques, dont une partie estimait que ce rôle doit être joué par la Commission africaine, comme prévu dans la Charte. Une autre partie, qui l'a emporté, a soutenu le contraire. La solution retenue, qui permet à la Cour de tenter un règlement amiable de l'affaire, reflète le système du contentieux africain, illustré par la justice rendue sous l'arbre à palabres, où la conciliation l'emporte plus souvent sur le duel judiciaire propre au système de droit romano-germanique. Toutefois, le règlement amiable d'une affaire par la Cour africaine doit se faire, selon la formule consacrée, «dans le respect des droits de l'homme et des peuples ».

L'article 10 du Protocole est relatif aux audiences de la Cour africaine et à la représentation des parties devant celle-ci. Les audiences sont publiques, à moins que la Cour ne décide le huis clos. Les parties à l'instance peuvent se faire assister ou représenter. Cette disposition prévoit également la possibilité de bénéficier, en cas de besoin, d'une assistance gratuite. Elle prévoit en outre qu'une protection et des facilités seront accordées aux personnes, témoins ou autres personnes représentant les parties, et ce, conformément au droit international.

Le quorum pour l'examen d'une affaire est fixé à sept juges au moins (article 23). Les juges ne doivent pas siéger dans une affaire dont ils ont eu à connaître, à quelque titre que ce soit: agent, conseil, avocat d'une des parties, membre d'un tribunal ou international, d'une commission d'enquête, etc. (article 17, par. 2). Ils doivent également se récuser dans les affaires concernant l'Etat dont ils sont ressortissants (article 22). Il n'y a donc pas d'institution de juge *ad hoc*, contrairement aux systèmes européen et interaméricain.

Concernant l'instruction proprement dite de l'affaire, la Cour africaine procède, aux termes de l'article 26 du Protocole, à un examen contradictoire de celle-ci; elle diligente une enquête en cas de besoin et recourt à tous moyens de preuve qu'elle juge appropriés, y compris aux témoins. A l'instar des Cours européenne et interaméricaine, la Cour africaine peut ordonner des mesures provisoires, en cas de situation susceptible de causer des dommages irréparables à la victime (article 27). A la fin de l'instruction du fond de l'affaire, la Cour statue par voie d'arrêt, à la majorité des membres siégeant. Dans l'appréciation des faits, elle applique la Charte africaine, le Protocole à celle-ci, tout autre instrument africain ou tout autre instrument pertinent relatif aux droits de l'homme (art. 3 et 7 du Protocole).

L'arrêt de la Cour, qui doit être rendu dans les 90 jours suivant la clôture de l'affaire, est définitif et ne peut faire l'objet d'appel, mais seulement d'interprétation ou de révision, « en cas de survenance de preuves dont elle n'avait pas connaissance au moment de sa décision et dans les conditions déterminées dans le Règlement intérieur » (article 28). En tout état de cause, l'arrêt de la Cour doit être motivé et les juges peuvent y joindre leur opinion individuelle ou dissidente (article 28). En cas de constatation de violation des droits de l'homme, la Cour africaine « ordonne toutes les mesures appropriées afin de remédier à la situation, y compris le paiement d'une indemnité ou l'octroi d'une réparation » (article 27, alinéa 1). Cette disposition trouve son écho dans la satisfaction équitable prévue en ce cas dans les systèmes européen et interaméricain.

Aux termes des articles 29 et 30 du Protocole, les Etats parties s'engagent à exécuter les arrêts rendus par la Cour africaine, le suivi de l'exécution de ceux-ci revenant au Conseil des Ministres de l'OUA. La solution retenue par le Protocole est plus souple et plus réaliste que celle prévue par la Charte africaine, qui subordonne la publication des rapports et des décisions de la Commission africaine à l'approbation préalable de la Conférence des Chefs d'Etat et de gouvernement de l'OUA. L'option faite dans le Protocole se rapproche de la procédure en vigueur dans le système européen, où l'exécution des arrêts rendus par la Cour est confiée au Comité des Ministres du Conseil de l'Europe.

Toutefois, comme la Cour interaméricaine le fait pour l'Assemblée générale de cette dernière organisation, la Cour africaine adresse à la Conférence des Chefs d'Etat et de gouvernement de l'OUA le rapport annuel de ses activités, dans lequel elle mentionne les cas d'inexécution de ses décisions par des Etats (article 31). Enfin, à l'instar des Cours européenne et interaméricaine, la Cour africaine établit son Règlement intérieur (article 32).

CONCLUSION

L'adoption du Protocole à la Charte africaine créant une Cour régionale constitue indéniablement un apport important au droit international des droits de l'homme. Au plan régional, elle permet de renforcer le mécanisme de contrôle préexistant. La Commission africaine, confinée dans son rôle de promotion et paralysée dans sa fonction de protection, aura, plus particulièrement à travers la Cour, un «auxiliaire» de taille dans l'accomplissement de cette dernière mission. La nature même de la Cour (organe jouissant d'une indépendance fonctionnelle) et le caractère obligatoire de ses arrêts pallieront les faiblesses du mécanisme de contrôle institué par la Charte africaine. Au plan universel, la création de la Cour africaine comble une lacune. En effet, en adoptant la Charte africaine, les Etats africains s'étaient inspirés des systèmes européen et interaméricain tout en privant son mécanisme de contrôle d'un organe de caractère judiciaire. Or, c'est ce type d'institution qui fait la spécificité des deux systèmes régionaux précités, fondés sur la soumission de l'Etat à la juridiction internationale. En s'orientant vers l'adoption du même procédé, les Etats africains contribuent au développement du modèle juridictionnel régional de protection des droits de l'homme. En ce sens, il s'agit d'une véritable avancée juridique. Toutefois, la viabilité d'une telle institution dépendra de la volonté des Etats d'en faire un instrument efficace au service des droits de l'homme, notamment en lui allouant des ressources appropriées et en se soumettant à ses décisions.

Quoi qu'il en soit, la création de cette Cour constituera une avancée significative pour les peuples africains, en cette année de commémoration du cinquantenaire de la Déclaration universelle des droits de l'homme.

Mutoy Mubiala

NOTES

[1] Doc. CM/2051(LXVII), approuvé par la Conférence des Chefs d'Etat et de gouvernement de l'OUA le 9 juin 1998 à Ouagadougou. Le jour même de l'adoption du Protocole, 24 Etats l'avaient signé. Il entrera en vigueur 30 jours après le dépôt du quinzième instrument de ratification ou d'adhésion. Le siège de la Cour reste à déterminer. D'ores et déjà, l'Afrique du Sud et le Sénégal se sont portés candidats pour l'accueillir. Ce dernier pays a ratifié, le premier, le Protocole. D'après le Conseiller juridique de l'OUA, se référant à l'expérience de cette Organisation en matière des traités, le Protocole devrait recevoir le nombre de ratifications nécessaires pour son entrée en vigueur dans les deux années suivant son adoption, soit en l'an 2000.

[2] Le Groupe d'experts juridiques gouvernementaux chargé de l'élaboration du projet de Protocole s'est réuni à trois reprises : au Cap, Afrique du Sud (6-12 septembre 1995), à Nouakchott, Mauritanie (11-14 avril 1997) et à Addis-Abeba, Ethiopie (8-11 décembre 1997), cette dernière session ayant été élargie aux diplomates et suite à laquelle le projet du Protocole fut approuvé par la Conférence des Ministres de la justice de l'OUA le 12 décembre 1997 et par le Conseil des Ministres de l'OUA le 27 février 1998, avant d'être adopté formellement par la Conférence des Chefs d'Etat et de gouvernement de l'OUA comme mentionné ci-dessus (note 1).

[3] Deux communications introduites par l'Ethiopie et le Soudan contre l'Erythrée ont été déclarées irrecevables par la Commission, ce pays n'étant pas partie à la Charte.

[4] BADAWI EL-SHEIK, I.A., «Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights: Introductory Note», *Revue africaine de droit international et comparé*, vol. 9, 1997.

[5] Le Protocole n° 11 à la Convention européenne des droits de l'homme prévoit que la Cour européenne peut compter plus d'un juge d'un même Etat; ce Protocole fixe également la limite d'âge des juges à 70 ans, réduit la durée de leur mandat de neuf à six ans et prescrit qu'ils travaillent à plein temps. Dans le cadre de cette réforme, la Cour devient un organe unique, intégrant les anciennes Commission et Cour.

[6] FLAUSS, J.-F., «Le droit de recours individuel devant la Cour européenne des droits de l'homme. Le Protocole n° 9 à la Convention européenne des droits de l'homme», *Annuaire français de droit international*, vol. 36, 1990, p. 512-515.

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Pendant les six semaines de la Commission des droits de l'homme, plus de 8 000 utilisateurs se sont connectés au site. En outre, environ 150 000 pages ont été consultées chaque semaine.
Ces indications démontrent le succès du projet et nous encouragent à renforcer notre engagement, et à accentuer nos efforts pour son amélioration et sa mise à jour.
Vos commentaires et suggestions jouent un rôle important. Dans ce but, nous avons créé spécialement une adresse électronique :
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où nous attendons vos remarques.

Calendar / Calendrier*
October – December 1998 / octobre - décembre 1998

* In Geneva unless otherwise specified / à Genève, sauf contre-indication

Committee on the Rights of the Child	21 Sept./sept. 9 Oct./oct.	Comité des droits de l'enfant
Working Group on Enforced or Involuntary Disappearances	28 Sept./sept. 2 Oct./oct.	Groupe de travail sur les disparitions forcées ou involontaires
Commission on Human Rights, Working Group on the Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	21 Sept./sept. 9 Oct./oct.	Groupe de travail chargé d'examiner le projet de protocole facultatif se rapportant à la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants
Pre-sessional Working Group of the Committee on the Rights of the Child	12-16 Oct./oct.	Groupe de travail présession du Comité des droits de l'enfant
Pre-sessional Working Group of the Human Rights Committee	12-16 Oct./oct.	Groupe de travail présession du Comité des droits de l'homme
Special Committee to Investigate Israeli Practices affecting the human rights of the Palestinian People and Other Arabs of the Occupied Territories	22-27 Oct./oct.	Comité spécial chargé d'enquêter sur les pratiques israéliennes affectant les droits de l'homme du peuple palestinien et des autres Arabes des Territoires occupés
Human Rights Committee	19 Oct./oct. 6 Nov./nov.	Comité des droits de l'homme
Seminar: Islamic Perspectives on the Universal Declaration of Human Rights	9-10 Nov./nov.	Séminaire sur les Perspectives islamiques sur la Déclaration universelle des droits de l'homme
Committee against Torture	9-20 Nov./nov.	Comité contre la Torture
Intergovernmental Working Group of Experts on Human Rights of Migrants	23-27 Nov./nov.	Groupe de travail inter-gouvernemental d'experts sur les migrants et les droits de l'homme
Committee on Economic, Social and Cultural Rights	16 Nov./nov 4 Dec./déc.	Comité des droits économiques, sociaux et culturels
Working Group on Arbitrary Detention	25 Nov./nov. 4 Dec./déc.	Groupe de travail sur la détention arbitraire
Working Group on Enforced or Involuntary Disappearances	25 Nov./nov. 4 Dec./déc.	Groupe de travail sur les disparitions forcées ou involontaires
Board of Trustees of the Voluntary Fund for Technical Cooperation in the field of Human Rights	29 Nov./nov. 2 Dec./déc.	Conseil d'administration du fonds de contributions volontaires pour la coopération technique dans le domaine des droits de l'homme
Commission on Human Rights, Open-ended Working Group on "Draft United Nations Declaration on the Rights of Indigenous Peoples"	30 Nov./nov. 11 Dec./déc.	Commission des droits de l'homme, Groupe de travail à composition non limitée sur le "Projet de Déclaration des droits des populations autochtones"
Pre-sessional Working Group of the Committee on Economic, Social and Cultural Rights	7-11 Dec./déc.	Groupe de travail présession du Comité des droits économiques, sociaux et culturels

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